

By the Committee on Communications and Public Utilities; and Senators Constantine, Bennett, Campbell, Baker, King, Alexander, Crist, Wise, Posey, Rich, Villalobos, Hill, Haridopolos, Dawson and Bullard

579-2048-05

1 A bill to be entitled

2 An act relating to local governments; providing

3 definitions; providing for notice of public

4 hearings to consider whether the local

5 government will provide a communications

6 service; requiring a governmental entity to

7 consider certain factors before a

8 communications service is provided; requiring a

9 local government to make available a written

10 business plan; providing criteria for the

11 business plan; setting pricing standards;

12 providing for accounting and books and records;

13 requiring the governmental entity to establish

14 an enterprise fund; requiring the governmental

15 entity to maintain separate operating and

16 capital budgets; limiting the use of

17 eminent-domain powers; requiring compliance

18 with certain federal and state laws; requiring

19 local government to treat itself the same as it

20 treats other providers of similar

21 communications services; requiring a local

22 government provider of communications services

23 to follow the same prohibitions as other

24 providers of the same services; providing for

25 severability; providing an effective date.

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27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Communications services offered by

30 governmental entities.--

31 (1) As used in this section, the term:

1 (a) "Advanced service" means
2 high-speed-Internet-access-service capability in excess of 200
3 kilobits per second in the upstream or the downstream
4 direction, including any service application provided over the
5 high-speed-access service or any information service as
6 defined in 47 U.S.C. s. 153(20).

7 (b) "Cable service" has the same meaning as in 47
8 U.S.C. s. 522(6).

9 (c) "Communications services" includes any "advanced
10 service," "cable service," or "telecommunications service" and
11 shall be construed in the broadest sense.

12 (d) "Enterprise fund" means a separate fund to account
13 for the operation of communications services by a local
14 government, established and maintained in accordance with
15 generally accepted accounting principles as prescribed by the
16 Governmental Accounting Standards Board.

17 (e) "Governmental entity" means any political
18 subdivision as defined in section 1.01, Florida Statutes,
19 including any county, municipality, special district, school
20 district, utility authority or other authority or any
21 instrumentality, agency, unit or department thereof. The term
22 does not include airports of governmental entities.

23 (f) "Provide" or "providing" means offering or
24 supplying a communications service for a fee or other
25 consideration to a person, including any portion of the public
26 or private provider, but does not include service by an entity
27 to itself or to any other governmental entity.

28 (g) "Subscriber" means a person who receives a
29 communications service.

30 (h) "Telecommunications services" means the
31 transmission of signs, signals, writing, images, sounds,

1 messages, data, or other information of the user's choosing,
2 by wire, radio, light waves, or other electromagnetic means,
3 without change in the form or content of the information as
4 sent and received by the user and regardless of the facilities
5 used.

6 (2)(a) A governmental entity that proposes to provide
7 a communications service shall hold no less than two public
8 hearings, which shall be held not less than 30 days apart. At
9 least 30 days before the first of the two public hearings, the
10 governmental entity must give notice of the hearing in the
11 predominant newspaper of general circulation in the area
12 considered for service. At least 40 days before the first
13 public hearing, the governmental entity must provide notice to
14 the Department of Revenue, which shall electronically forward
15 the notice to all dealers of communications services
16 registered with the Department of Revenue under chapter 202,
17 Florida Statutes. The notice must include the time and place
18 of the hearings and must state that the purpose of the
19 hearings is to consider whether the governmental entity will
20 provide communications services. The notice must include, at a
21 minimum, the geographic areas proposed to be served by the
22 governmental entity and the services, if any, which the
23 governmental entity believes are not currently being
24 adequately provided. The notice must also state that any
25 dealer who wishes to do so may appear and be heard at the
26 public hearings.

27 (b) At a public hearing required by this subsection, a
28 governmental entity must, at a minimum, consider:

29 1. Whether the service that is proposed to be provided
30 is currently being offered in the community and, if so,
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1 whether the service is generally available throughout the
2 community.

3 2. Whether a similar service is currently being
4 offered in the community and, if so, whether the service is
5 generally available throughout the community.

6 3. If the same or similar service is not currently
7 offered, whether any other service provider proposes to offer
8 the same or a similar service and, if so, what assurances that
9 service provider is willing or able to offer regarding the
10 same or similar service.

11 4. The capital investment required by the government
12 entity to provide the communications service, the estimated
13 realistic cost of operation and maintenance and, using a full
14 cost-accounting method, the estimated realistic revenues and
15 expenses of providing the service and the proposed method of
16 financing.

17 5. The private and public costs and benefits of
18 providing the service by a private entity or a governmental
19 entity, including the affect on existing and future jobs,
20 actual economic development prospects, tax-base growth,
21 education, and public health.

22 (c) At one or more of the public hearings under this
23 subsection, the governmental entity must make available to the
24 public a written business plan for the proposed communications
25 service venture containing, at a minimum:

26 1. The projected number of customers to be served by
27 the venture.

28 2. The geographic area to be served by the venture.

29 3. The types of communications services to be
30 provided.

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1 4. A plan to ensure that revenues exceed operating
2 expenses and payment of principal and interest on debt within
3 4 years.

4 5. Estimated capital and operational costs and
5 revenues for the first 4 years.

6 6. Projected network modernization and technological
7 upgrade plans, including estimated costs.

8 (d) After making specific findings regarding
9 paragraphs (2)(b) and (2)(c), the governmental entity may
10 authorize providing a communications service by a majority
11 recorded vote, by resolution, or other formal means of
12 adoption.

13 (e) The governing body of a governmental entity may
14 issue one or more bonds to finance the capital costs for
15 facilities to provide a communications service. However:

16 1. A governmental entity may pledge only revenues in
17 support of the issuance of any bond to finance providing a
18 communications service within the county in which the
19 governmental entity is located or within an area in which the
20 governmental entity provides electric service outside its home
21 county under an electric service territorial agreement
22 approved by the Public Service Commission before the effective
23 date of this act.

24 2. Revenue bonds issued in order to finance providing
25 a communications service are not subject to the approval of
26 the electors if the revenue bonds mature within 15 years.
27 Revenue bonds issued to finance providing a communications
28 service that does not mature within 15 years must be approved
29 by the electors. The election must be conducted as specified
30 in chapter 100, Florida Statutes.

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1 (f) A governmental entity providing a communications
2 service may not price any service below the cost of providing
3 the service by subsidizing the communications service with
4 moneys from rates paid by customers of a noncommunications
5 services utility or from any other revenues. The cost standard
6 for determining cross-subsidization is whether the total
7 revenue from the service is less than the total long-run
8 incremental cost of the service. Total long-run incremental
9 cost means service-specific volume and nonvolume-sensitive
10 costs.

11 (g) A governmental entity providing a communications
12 service must comply with the requirements of section 218.32,
13 Florida Statutes, and shall keep separate and accurate books
14 and records, maintained in accordance with generally accepted
15 accounting principles, of a governmental entity's
16 communication service, and they shall be made available for
17 any audits of the books and records conducted under applicable
18 law. To facilitate equitable distribution of indirect costs, a
19 local government shall develop and follow a cost-allocation
20 plan, which is a procedure for allocating direct and indirect
21 costs and which is generally developed in accordance with OMB
22 Circular A-87, cost principles for state, local, and Indian
23 tribal government, published by the United States Office of
24 Management and Budget.

25 (h) The governmental entity shall establish an
26 enterprise fund to account for its operation of communications
27 services.

28 (i) The governmental entity shall adopt separate
29 operating and capital budgets for its communications services.

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1 (j) A governmental entity may not use its powers of
2 eminent domain under chapter 73, Florida Statutes, solely for
3 the purpose of providing a communications service.

4 (3)(a) A governmental entity that provides a cable
5 service shall comply with the Cable Communications Policy Act
6 of 1984, 47 U.S.C. 521, et seq., the regulations issued by the
7 Federal Communications Commission under the Cable
8 Communications Policy Act of 1984, 47 U.S.C. 521, et seq., and
9 all applicable state and federal rules and regulations,
10 including, but not limited to, section 166.046, Florida
11 Statutes, and those provisions of chapters 202, 212, and 337,
12 Florida Statutes, which apply to a provider of the services.

13 (b) A governmental entity that provides a
14 telecommunications service or advanced service must comply, if
15 applicable, with chapter 364, Florida Statutes, and rules
16 adopted by the Public Service Commission; chapter 166, Florida
17 Statutes; and all applicable state and federal rules and
18 regulations, including, but not limited to, those provisions
19 of chapters 202, 212, and 337, Florida Statutes, which apply
20 to a provider of the services.

21 (c) A governmental entity may not exercise its power
22 or authority in any area, including zoning or land use, to
23 require any person, including residents of a particular
24 development, to any communication service of a governmental
25 entity.

26 (d) A governmental entity shall apply its ordinances,
27 rules, and policies, and exercise any authority under state or
28 federal laws, including, but not limited to, those relating to
29 the following subjects and without discrimination as to itself
30 when providing a communications service or to any private
31 provider of communications services:

1 1. Access to public rights-of-way; and
2 2. Permitting, access to, use of, and payment for use
3 of governmental entity-owned poles. The governmental entity is
4 subject to the same terms, conditions, and fees, if any, for
5 access to government-owned poles which the governmental entity
6 applies to a private provider for access.

7 (4) A governmental entity that is providing advanced
8 service, cable service, or telecommunications service before
9 April 1, 2005, or that has issued debt pledging revenues from
10 advanced services, cable services, or telecommunications
11 service, respectively, before April 1, 2005, or in which the
12 governing body has authorized the providing of advanced
13 services, cable services, or telecommunications services and
14 the governmental entity has purchased equipment specifically
15 for providing the service before April 1, 2005, is not
16 required to comply with paragraph (2)(a), paragraph (2)(b),
17 paragraph (2)(c), paragraph (2)(d), paragraph (2)(e), or
18 paragraph (2)(f) in order to continue to provide advanced
19 services, cable services, or telecommunications services,
20 respectively. This subsection does not relieve a governmental
21 entity from complying with subsection (5).

22 (5) Notwithstanding section 542.235, Florida Statutes,
23 or any other law, a governmental entity that provides a
24 communications service is subject to the same prohibitions
25 applicable to private providers under sections 542.18 and
26 542.19, Florida Statutes, as it relates to providing a
27 communications service.

28 Section 2. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 invalidity does not affect other provisions or applications of
31 the act which can be given effect without the invalid

1 provision or application, and to this end the provisions of
2 this act are severable.

3 Section 3. This act shall take effect upon becoming a
4 law.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 SBs 2072 & 1714

9 The committee substitute creates a notification and public
10 hearing process. Governmental entities must hold two public
11 hearings no sooner than 30 days apart to consider whether the
12 governmental entity will provide communications services. All
13 dealers of communications services will be electronically
14 notified before the first hearing. The notice is to include
15 the geographic area proposed to be served and the services
16 that are not believed to be adequately provided. Minimum
17 considerations the Governmental Entity must deliberate at the
18 public hearing are provided. The governmental entity is
19 required to make available to the public a written business
20 plan for the proposed communications service venture and sets
21 forth the minimum requirements to be included in the plan. The
22 governmental entity is authorized to provision communication
23 services upon majority vote and some formal means of adoption
24 and upon making specific findings. The bill provides for
25 limited bonding requirements, prohibits below cost pricing of
26 services, specifies accounting and books and records
27 requirements, requires establishment of an enterprise fund,
28 limits eminent domain authority, requires compliance with
29 certain federal and state laws regulating respective
30 communications services, provides for a grandfather clause for
31 current governmental enterprises and prohibits restraint on
trade or monopolization. Finally there is a severability
clause.